IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 6432 of 2007(N)

PETITIONER:

**KARUVATTA ST.MARY'S ORTHODOX CHURCH,
KARUVATTA, ADOOR, PERINGANADU, REP. BY ITS TRUSTEE
MR.C.M.THOMAS, CHAMAKALAYIL JT. BHAVAN, KARUVATTA,
ADOOR P.O., PATHANAMTHITTA DISTRICT.**

**BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN**

RESPONDENTS:
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1. **THE DIRECTOR OF SURVEY,
O/O. THE DIRECTOR OF SURVEY, SURVEY DEPARTMENT,
THIRUVANANTHAPURAM.**

2. **DISTRICT SURVEY SUPERINTENDENT,
O/O. THE DY. DIRECTOR OF SURVEY, PATHANAMTHITTA.**

3. **THE DISTRICT COLLECTOR,
PATHANAMTHITTA.**

BY GOVERNMENT PLEADER SMT. R. BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/09/2007 ALONG WITH WPC NO. 19066 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.6432/2007 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER IN I.A.NO.1884/06 IN O.S.NO.412/2000 DTD. 07/02/007 IN THE MUNSIFF COURT, ADOOR.**

EXT.P2: **COPY OF THE REPRESENTATION DTD. 20/09/2006 SUBMITTED BEFORE THE DEPUTY DIRECTOR OF SURVEY DEPARTMENT AND DISTRICT COLLECTOR.**

EXT.P3: **COPY OF THE LETTER NO.1620/06 DTD. 09/01/2007 SENT BY 2ND RESPONDENT TO THE TRUSTEE OF THE PETITIONER.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) Nos. 6432 & 19066 OF 2007

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Dated this the 6th day of September 2007

JUDGMENT

W.P.(C)No.19066 of 2007 is filed against the order of the Munsiff's Court, Adoor in I.A.No.1883 of 2006 in O.S.No.412 of 2000. It is an application to set aside the Commissioner's plan and report. The court on a consideration of the materials found that there are no grounds to set aside the same and dismissed the application.

2. A perusal of the order would reveal that the suit is filed for fixation of boundary and for mandatory injunction. The crux of the matter depends upon the length of the southern boundary. According to the writ petitioner, the actual length of the same is 9.9 metres whereas it is shown as 12.7 metres by the Surveyor and the Commissioner based on the resurvey plan. The property has been dealt with and measured in accordance with the resurvey plan. Resurvey plan admittedly shows that the length will be 12.7 metres. So, it is in accordance with the same the court has proceeded to dispose of the matter and found that the allegations levelled are incorrect and dismissed the prayer.

3. In the other writ petition, the challenge is against the order of the learned Munsiff in I.A.No.1884 of 2006. It was an application filed by the writ petitioner, wherein he sought a direction from the Munsiff to the survey authorities to correct the mistake committed in the resurvey plan. The court found that it cannot give any such direction and therefore dismissed the application. The point of dispute between the parties mainly centres around now at the correctness of resurvey plan. The plaintiff would contend that as per the resurvey plan, the length is 12.7 metres whereas the other side would contend that it is 9.9 metres. The resurvey plan is prepared in accordance with the statutory provisions enumerated in the Kerala Survey and Boundaries Act, 1961. Section 11 of the Act gives a power to the aggrieved party to prefer an appeal and Section 12 deals with time stipulation as well as the power to condone the delay. After the completion of the same, again remedy is provided under Section 14 for the institution of a suit. So a brief reference to Sections 6 to 14 of the Kerala Survey and Boundaries Act would show that the statutory power is conferred with the survey department to resurvey the property in accordance with and in compliance with the mandate mentioned in those sections and if a person is aggrieved, he can approach the appellate authority mentioned in the Act and thereafter, if necessary, approach a civil court for a suit in respect of the boundary of

the property surveyed. I feel in a case of this nature, a person who is really aggrieved, has to resort to the statutory remedies provided in the Act and it may not be correct for the civil court to interfere at this stage, especially when provision is provided in the Act for remedy.

4.Learned counsel for the petitioner had cited before me the decision of the Apex Court reported in ***E.Achuthan Nair v. P.Narayanan Nair (AIR 1987 SC 2137).*** The Apex Court held that the courts in India have got the power to entertain a suit for demarcating the boundary of the property. There is no quarrel about such proposition, but in adjudicating the same the resurvey plan has come into the lime light and that is the subject matter of attack at this stage now.

Therefore, I do not find any ground in these writ petitions to grant a relief to the petitioner at this stage. Hence they are dismissed. Needless to say that the first defendant in the suit has got the full opportunity to adduce evidence in support of his contentions including the filing of objection to the Commissioner's report and challenge the Commissioner's report, etc. Since the plaintiff submits that he is not able to utilize the property at all, I direct the court below to make expeditious trial of the suit itself and at any

rate dispose of the matter within 3 months from today.

M.N.KRISHNAN, JUDGE

Cdp/-